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No. 99-1529

In the Supreme Court of the United States

DONNA RAE EGELHOFF, PETITIONER

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, preempts a state law that purports to revoke the designation of beneficiary made pursuant to the terms of an ERISA plan.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	5
Argument:	
ERISA preempts state law disallowing the distribution of pension and welfare benefits to the beneficiary who has been properly designated under the terms of an ERISA plan	8
I. The Washington statute, as a state law that "relate[s] to" employee benefit plans governed by ERISA, is preempted under Section 514(a)	11
II. The Washington statute is also preempted because it conflicts with provisions of ERISA and operates to frustrate the objects of ERISA	19
Conclusion	30

TABLE OF AUTHORITIES

Cases:

Alessi v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981)	9, 19
Arkansas La. Gas Co. v. *Hall*, 453 U.S. 571 (1981)	22, 25
Boggs v. *Boggs*, 520 U.S. 833 (1997)	*passim*
Brandon v. *Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994), cert. denied, 513 U.S. 1081 (1995)	27-28
California Div. of Labor Standards Enforcement v. *Dillingham Constr., N.A., Inc.*, 519 U.S. 316 (1997)	4, 9, 11, 17, 18
Central States S.E. & S.W. Areas Pension Fund v. *Central Transp., Inc.*, 472 U.S. 559 (1985)	20
Curtiss-Wright Corp. v. *Schoonejongen*, 514 U.S. 73 (1995)	21, 22

Cases—Continued: Page

De Buono v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806 (1997) 12, 18
District of Columbia v. *Greater Washington Bd. of Trade*, 506 U.S. 125 (1992) 11
Emard v. *Hughes Aircraft Co.*, 153 F.3d 949 (9th Cir. 1998), cert. denied, 525 U.S. 1122 (1999) 4
Equitable Life Assurance Soc'y of the United States v. *Crysler*, 66 F.3d 944 (8th Cir. 1995) 27
FMC Corp. v. *Holliday*, 498 U.S. 52 (1990) 10, 11, 18
Fox Valley & Vicinity Constr. Workers Pension Fund v. *Brown*, 897 F.2d 275 (7th Cir.), cert. denied, 498 U.S. 820 (1990) 21, 23, 28
Gade v. *National Solid Wastes Management Ass'n*, 505 U.S. 88 (1992) 10
Guidry v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990) 24, 28
Harris Trust & Sav. Bank v. *Salomon Smith Barney, Inc.*, 120 S. Ct. 2180 (2000) 29
Hook v. *Morrison Milling Co.*, 38 F.3d 776 (5th Cir. 1994) 23
Ingersoll-Rand Co. v. *McClendon*, 498 U.S. 133 (1990) 8, 9, 10
Krishna v. *Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993) 28
MacAnally v. *Levin*, No. 99CA0120, 2000 WL 328723 (Colo. Ct. App. Mar. 30, 2000) 27
Mackey v. *Lanier Collection Agency & Serv.*, 486 U.S. 825 (1988) 12, 17, 18
McMillan v. *Parrott*, 913 F.2d 310 (6th Cir. 1990) 22
Metropolitan Life Ins. Co. v. *Massachusetts*, 471 U.S. 724 (1985) 10
Metropolitan Life Ins. Co. v. *Pettit*, 164 F.3d 857 (4th Cir. 1998) 17, 22, 27, 28, 29

Cases—Continued: Page

Metropolitan Life Ins. Co. v. *Pressley*, 82 F.3d 126 (6th Cir. 1996), cert. denied, 520 U.S. 1263 (1997) 27, 28
New Orleans Elec. Pension Fund v. *DeRocha*, 779 F. Supp. 845 (E.D. La. 1991) 30
New York State Conference of Blue Cross & Blue Shield Plans v. *Travelers Ins. Co.*, 514 U.S. 645 (1995) 4, 7, 9, 10, 11, 12, 18, 19
Prudential Life Ins. Co. v. *Tull*, 690 F.2d 848 (4th Cir. 1982) 29
Ridgway v. *Ridgway*, 454 U.S. 46 (1981) 30
Shaw v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983) 8, 9, 19
UNUM Life Ins. Co. of Am. v. *Ward*, 526 U.S. 358 (1999) 8, 19
Variety Corp. v. *Howe*, 516 U.S. 489 (1996) 20, 22

Statutes and regulations:

Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* 1
29 U.S.C. 1001(b) 6, 13
29 U.S.C. 1002(7) 14
29 U.S.C. 1002(8) 6, 7, 14, 16, 20, 28
29 U.S.C. 1002(13) 1
29 U.S.C. 1024(b) 21
29 U.S.C. 1055 26
29 U.S.C. 1055(a) 16
29 U.S.C. 1055(c)(2) 16
29 U.S.C. 1056(d) 28
29 U.S.C. 1056(d)(1) 5, 7, 11, 20, 24, 28
29 U.S.C. 1056(d)(2) 24
29 U.S.C. 1056(d)(3) 15
29 U.S.C. 1056(d)(3)(A) 24
29 U.S.C. 1056(d)(3)(B)(i)(I) 15
29 U.S.C. 1056(d)(3)(B)(i)(II) 15

Statutes and regulations—Continued:	Page
29 U.S.C. 1056(d)(3)(B)(ii)	15
29 U.S.C. 1056(d)(3)(G)	16
29 U.S.C. 1056(d)(3)(H)	16
29 U.S.C. 1056(d)(3)(J)	15
29 U.S.C. 1056(d)(3)(K)	15
29 U.S.C. 1104(a)(1)	13, 27
29 U.S.C. 1104(a)(1)(A)	6, 13
29 U.S.C. 1104(a)(1)(D)	6, 7, 10-11, 16, 20, 28
29 U.S.C. 1132(a)(1)-(3)	23
29 U.S.C. 1136(b)	1
29 U.S.C. 1144(a)	4, 6
29 U.S.C. 1144(b)(2(A)	8
29 U.S.C. 1144(b)(7) (1994 & Supp. IV 1998)	16
29 U.S.C. 1169(a) (1994 & Supp. IV 1998)	15, 28
29 U.S.C. 1169(a)(5)	15-16
29 U.S.C. 1169(a)(7)	15
Wash. Rev. Code Ann. (West 1998):	
§ 11.07.010	*passim*
§ 11.07.010(1)	3
§ 11.07.010(2)	18
§ 11.07.010(2)(a)	3, 6, 24, 25
§ 11.07.010(2)(b)(ii)	25
§ 11.07.010(3)(a)	23, 25
§ 11.07.010(5)(a)	3, 6, 17
26 C.F.R. 1.40(a)-13(c)(1)(ii)	25
29 C.F.R. Pt. 2520, Subpt. B	21
Miscellaneous:	
H.R. Rep. No. 533, 93d Cong., 1st Sess. (1973)	14
120 Cong. Rec. (1974):	
p. 29,197	9
p. 29,933	9
p. 29,942	9
Priv. Ltr. Rul. 89-08-063 (Feb. 24, 1989)	29

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INTEREST OF THE UNITED STATES

This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1001 *et seq.*, preempts a state law that purports to revoke a beneficiary designation made, in accordance with the terms of an ERISA-governed employee benefit plan, by a participant in that plan. The Secretary of Labor has primary rulemaking and enforcement authority under Title I of ERISA, see 29 U.S.C. 1002(13), 1136(b), and therefore has a strong interest in ensuring that preemption principles are properly applied by the courts to ensure a nationally uniform system of plan administration.

STATEMENT

1. Petitioner, Donna Rae Egelhoff, was the second wife of David Egelhoff. During their marriage, David Egelhoff designated petitioner as beneficiary under a life insurance plan and a pension plan, both of which were sponsored by his employer, The Boeing Company, and governed by ERISA. Pet. App. 1a-3a, 30a.

Petitioner and David Egelhoff subsequently divorced. Pursuant to a document incorporated into the decree of dissolution, entered April 22, 1994, David Egelhoff was granted "100% of his Boeing retirement 401K and IRA." No mention was made in the document of David Egelhoff's life insurance policy. Pet. App. 3a, 30a.

On July 8, 1994, David Egelhoff died intestate, following an automobile accident. At that time, petitioner remained the beneficiary of record under both David Egelhoff's life insurance policy and his pension plan. The life insurance proceeds, totaling $46,000, were paid to her. Pet. App. 4a, 30a.

2. a. Respondents, who are David Egelhoff's children by his first marriage and his statutory heirs under state law, filed a conversion action against petitioner, seeking to recover the life insurance proceeds. They contended that their father's designation of petitioner as beneficiary under the life insurance policy was "revoked," by operation of state law, upon petitioner's divorce from Egelhoff. Pet. App. 4a-5a.

Respondents relied on Section 11.07.010 of the Washington Revised Code Annotated, which provides, in pertinent part:

> If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

Wash. Rev. Code Ann. § 11.07.010(2)(a) (West 1998). The statute applies to "all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage." *Id.* § 11.07.010(1). The statute defines the term "nonprobate assets" to include "a payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account." *Id.* § 11.07.010(5)(a).

b. Respondents separately brought suit against petitioner for the pension benefits, claiming that, under the property settlement incorporated into the divorce decree, petitioner had waived any right to those benefits. They further claimed that, in the event of such a waiver by David Egelhoff's only designated beneficiary, they became the beneficiaries under the terms of the plan. Pet. App. 6a, 30a-31a.

c. The state trial courts granted summary judgment in favor of petitioner in both cases. The courts concluded that the pension and insurance benefits "should be administered in accordance with" ERISA. Pet. App. 45a-48a.

3. The state court of appeals consolidated the cases and then reversed. Pet. App. 29a-44a. The court held that respondents, as their father's statutory heirs, were entitled under Section 11.07.010 to the life insurance proceeds and the pension benefits. *Id.* at 35a. The court rejected the trial courts' conclusion that ERISA preempts the application of Section 11.07.010 to alter the designation of beneficiaries under an employee benefit plan covered by ERISA, relying

on the Ninth Circuit's decision in *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949 (1998), cert. denied, 525 U.S. 1122 (1999), upholding the use of state law to alter such a designation. Pet. App. 35a-42a.[1]

4. The Washington Supreme Court affirmed. Pet. App. 1a-27a.

a. The state supreme court recognized that "ERISA contains a broad preemption provision that supersedes state laws that 'relate to' employee benefit plans," and that this Court has traditionally accorded the provision an "expansive interpretation." Pet. App. 10a (citing 29 U.S.C. 1144(a)), 12a. But the court read three of this Court's recent ERISA preemption decisions, beginning with *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Insurance Co.*, 514 U.S. 645 (1995), as "signal[ing] a significant retreat" from that earlier approach. Pet. App. 12a. The court also acknowledged, however, that the preemption provision continues after *Travelers* to invalidate those state laws that either "refer[] to" or have a "connection with" ERISA plans. *Id.* at 19a.

First, the state supreme court held that Section 11.07.010, although expressly referring to benefits payable under, *inter alia*, "employee benefit plan[s]," does not "refer to" ERISA plans to an extent that requires preemption. Pet. App. 19a-20a. The court, invoking this Court's discussion of the "reference to" prong of ERISA preemption analysis in *California Division of Labor Standards Enforcement* v. *Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997), stated that Section 11.07.010 "does not apply immediately

[1] The court of appeals found it unnecessary to address respondents' alternative argument that, under the property settlement incorporated into the divorce decree, petitioner "waived" her rights to the pension proceeds. Pet. App. 31a-32a n.7. The Washington Supreme Court likewise did not address the "waiver" issue. *Id.* at 27a.

and exclusively to an ERISA plan, nor is the existence of such a plan essential to operation of the statute." Pet. App. 20a.

Second, the state supreme court held that Section 11.07.010 does not have a sufficient "connection with" ERISA plans to require preemption. Pet. App. 20a. The court noted that a state law "[g]enerally" has a prohibited "connection with" an ERISA plan if it "mandates plan benefit structures or some aspect of their administration." *Ibid.* But the court reasoned that "the mere fact that [Section 11.07.010] may operate upon the beneficiary designation in an ERISA plan" is not sufficient to bring it within that category. *Id.* at 21a. The court viewed Section 11.07.010 as merely triggering the plan's own default provisions under the "legal fiction that the former spouse did not survive the decedent," and thus as not "alter[ing] the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration." *Ibid.* (internal quotation marks and brackets omitted).

b. The state supreme court then turned to the issue of conflict preemption. The court held that Section 11.07.010 does not conflict with ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1), which states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Pet. App. 23a. The court reasoned that the state statute "does not operate to divert benefit plan proceeds from distribution under terms of the plan documents," but merely alters "the underlying circumstances to which the distribution scheme of [the] plan must be applied." *Id.* at 25a- 26a.

SUMMARY OF ARGUMENT

The state statute at issue in this case, Section 11.07.010 of the Washington Revised Code Annotated, is preempted in its application to employee benefit plans governed by

ERISA. Section 11.07.010, as a state law that "relate[s] to any employee benefit plan," is expressly preempted under Section 514(a) of ERISA, 29 U.S.C. 1144(a). In addition, Section 11.07.010 squarely conflicts with several substantive provisions of ERISA, and thus is preempted under ordinary conflict preemption principles.

A. Section 11.07.010 "relate[s] to" ERISA plans, within the meaning of Section 514(a), by regulating an area of core concern under ERISA, the designation of beneficiaries and payment of benefits under ERISA plans. The state statute directly, indeed expressly, addresses who is to receive benefits under "[a] payable-on-death provision of a[n] * * * employee benefit plan." Wash. Rev. Code Ann. § 11.07.010(5)(a) (West 1998). The statute "revokes" a participant's designation of his or her spouse as a beneficiary under the plan if the participant and the spouse divorce after the designation is made. *Id.* § 11.07.010(2)(a). The statute thus dictates who is, and who is not, entitled to benefits under an ERISA plan.

Congress did not intend to leave such central questions in the administration of ERISA plans for resolution under state law. To the contrary, Congress sought to establish uniform "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans," by, *inter alia*, directing that fiduciaries act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with [ERISA]." 29 U.S.C. 1001(b); 29 U.S.C. 1104(a)(1)(D). Congress also directed that fiduciaries administer such plans "for the exclusive purpose of * * * providing benefits to participants and their beneficiaries," defining the latter as those persons "designated by a participant, or by the terms of an employee benefit plan," to receive benefits. 29 U.S.C. 1104(a)(1)(A); 29 U.S.C. 1002(8). Congress thus intended that fiduciaries, in determining who is entitled to benefits under an ERISA plan, look only to ERISA itself, the

governing plan documents, and the participant's beneficiary designation, and *not* to state law.

Clearly, then, those areas in which Congress sought "to avoid a multiplicity of regulations in order to permit the nationally uniform administration of employee benefit plans," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 658 (1995), include the designation of beneficiaries and the payment of benefits under such plans. State laws, such as Section 11.07.010, that purport to regulate in those areas are expressly preempted under Section 514(a) of ERISA.

B. In addition, Section 11.07.010 is preempted in its application to ERISA plans because it "conflicts with the provisions of ERISA" and "operates to frustrate its objects." *Boggs* v. *Boggs*, 520 U.S. 833, 841 (1997). As noted above, ERISA requires that employee benefit plans be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D), and specifically defines beneficiaries as those "designated by a participant, or by the terms of an employee benefit plan," 29 U.S.C. 1002(8). Those provisions require that benefits be paid to the person designated under the terms of the plan. Section 11.07.010, by contrast, requires that the benefits be paid to somebody else. And, in so doing, Section 11.07.010 undermines Congress's intent that employee benefit plans be uniform in their administration and simple in their application, so that participants, beneficiaries, and administrators are able to understand their rights and responsibilities with certainty.

Section 11.07.010 also conflicts with yet another provision of ERISA, 29 U.S.C. 1056(d)(1), which prohibits pension plan benefits from being "assigned or alienated," and thus from being diverted to purposes other than providing for participants and their designated beneficiaries. Section 11.07.010 extinguishes a designated beneficiary's right to pension

benefits and, in effect, "assigns" and "alienates" those benefits to another person. Accordingly, to the extent that Section 11.07.010 applies to ERISA pension plans, it is preempted for this additional reason.

ARGUMENT

ERISA PREEMPTS STATE LAW DISALLOWING THE DISTRIBUTION OF PENSION AND WELFARE BENEFITS TO THE BENEFICIARY WHO HAS BEEN PROPERLY DESIGNATED UNDER THE TERMS OF AN ERISA PLAN

ERISA is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). To that end, ERISA "sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans," and "imposes participation, funding, and vesting requirements on pension plans." *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 137 (1990) (quoting *Shaw*, 463 U.S. at 91). In addition, ERISA provides "a carefully integrated civil enforcement scheme that is one of the essential tools for accomplishing the stated purposes of ERISA." *Ibid.* (internal quotation marks and citation omitted).

Section 514(a) of ERISA, 29 U.S.C. 1144(a), is an express preemption provision that, subject to various exceptions not at issue here,[2] "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" governed by ERISA. As this Court has explained,

[2] For instance, the insurance savings clause, 29 U.S.C. 1144(b)(2)(A), exempts from preemption those state laws that "regulate[] insurance." Respondents have not, to our knowledge, claimed that Section 11.07.010 is so saved, and we assume that Section 11.07.010, which by its terms is not directed solely at insurance companies, is not an insurance regulation. See *UNUM Life Ins. Co. of Am.* v. *Ward*, 526 U.S. 358, 368 (1999).

Section 514(a) "indicates Congress's intent to establish the regulation of [ERISA] plans 'as exclusively a federal concern.'" *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 656 (1995) (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). Section 514(a) was designed "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law," and thus "to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ibid.* (quoting *Ingersoll-Rand*, 498 U.S. at 142).[3]

Accordingly, Section 514(a), while not without limits, is "clearly expansive" in its preemptive sweep. *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 324 (1997) (quoting *Travelers*, 514 U.S. at 655). To be sure, Section 514(a) does not reach state laws of general applicability that have only an "indirect economic influence" or some other merely incidental impact on ERISA plans. *Travelers*, 514 U.S. at 659. To the extent, however, that a state law purports to regulate matters at the core of ERISA—such as the content or administration of ERISA plans or the mechanisms for enforcing rights under those plans—this Court has not hesitated to hold the state law preempted under Section 514(a). See *Travelers*, 514 U.S.

[3] See also *Shaw*, 463 U.S. at 99 (quoting 120 Cong. Rec. 29,933 (1974) (remarks of Senator Williams) ("It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.")); *ibid.* (quoting 120 Cong. Rec. 29,197 (1974) (remarks of Representative Dent) (the "crowning achievement" of ERISA is "the reservation to Federal authority the sole power to regulate the field of employee benefit plans")); *id.* at 99-100 n.29 (quoting 120 Cong. Rec. 29,942 (1974) (remarks of Senator Javits)).

at 657-658 (discussing *Shaw*, *Alessi*, *Ingersoll-Rand*, and *FMC Corp.* v. *Holliday*, 498 U.S. 52, 60 (1990)); see also *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985) (Section 514(a) "displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements").

Moreover, whatever the limits of express preemption under Section 514(a), ERISA, like all federal statutes, operates under supremacy principles that require preemption "where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Boggs* v. *Boggs*, 520 U.S. 833, 844 (1997) (quoting *Gade* v. *National Solid Wastes Management Ass'n*, 505 U.S. 88, 98 (1992)); see also, *e.g.*, *Ingersoll-Rand*, 498 U.S. at 142-145. Thus, in *Boggs*, because the state community property law at issue "conflict[ed] with the provisions of ERISA" and "operat[ed] to frustrate its objects," the Court perceived no need to inquire whether Section 514(a) "provide[d] further and additional support for the pre-emption claim." 520 U.S. at 841.

Here, the Washington statute, to the extent that it overrides beneficiary designations made in accordance with the provisions of an ERISA plan, is preempted, whether the question is analyzed as one of express preemption or of conflict preemption. The state statute "relate[s] to an[] employee benefit plan" governed by ERISA, within the meaning of Section 514(a), because the statute expressly refers to rights under "employee benefit plans" and seeks to regulate core matters in the administration of such plans, the designation of beneficiaries and the distribution of benefits. The state statute squarely conflicts with Congress's directive that fiduciaries administer ERISA plans "in accordance with the documents and instruments governing the plan,"

29 U.S.C. 1104(a)(1)(D), because the statute requires the payment of benefits to persons other than those entitled to them under the governing plan documents. In addition, to the extent that the state statute reaches the payment of benefits under ERISA pension plans, the statute also conflicts with 29 U.S.C. 1056(d)(1), which prohibits the assignment or alienation of pension plan benefits.

I. The Washington Statute, As A State Law That "Relate[s] To" Employee Benefit Plans Governed By ERISA, Is Preempted Under Section 514(a)

This Court has recognized that Section 514(a), in "supersed[ing] any and all State laws insofar as they * * * relate to any employee benefit plan" governed by ERISA, is a preemption provision "conspicuous for its breadth." *Dillingham*, 519 U.S. at 324 (quoting *FMC Corp.*, 498 U.S. at 58). The Court has also recognized, however, that Congress could not have intended Section 514(a) to "extend to the furthest stretch of its indeterminacy," preempting state laws of general applicability that have "only a tenuous, remote, or peripheral connection with covered plans." *Travelers*, 514 U.S. at 655, 661 (quoting *District of Columbia* v. *Greater Washington Bd. of Trade*, 506 U.S. 125, 130 n.1 (1992)). The Court has thus sought to give content to the statutory phrase "relate to any employee benefit plan" by looking to "the objectives of the ERISA statute" as a whole. *Id.* at 656.

The Court has identified two categories of state laws that are subject to preemption under Section 514(a): first, state laws that specifically "refer to" ERISA plans and, second, state laws that otherwise have a "connection with" ERISA plans. *Dillingham*, 519 U.S. at 324-325. Not every state law that affects ERISA plans falls into the second category. The category does, however, encompass those state laws that implicate Congress's objective in Section 514(a) "to avoid a multiplicity of regulation in order to permit the nationally

uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. Such prohibited state laws include, among others, those that regulate "employee benefit structures or their administration." *Id.* at 658. By contrast, the state laws that the Court has held not to be preempted under that analysis were laws of general applicability that had only an incidental economic impact on ERISA plans.[4] The state statute at issue in this case falls squarely into the prohibited category, because the statute purports to dictate the payment of benefits under ERISA plans, a matter of plan structure and administration.

1. One of the areas in which Congress has sought "to avoid a multiplicity of [state] regulation in order to permit the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657, is the conservation and distribution of ERISA plan benefits. That area includes determinations by ERISA plan administrators as to the proper recipients of benefits payable under the plan. Congress made the protection of benefits a central purpose of ERISA, established uniform standards to govern the conduct of fiduciaries who administer the benefits, directed fiduciaries to administer plans (*e.g.*, to pay benefits) in accordance with the governing plan documents, and defined

[4] See *Travelers*, 514 U.S. at 659 (describing state law that imposed a surcharge on hospital patients who were insured by commercial insurers other than Blue Cross-Blue Shield as having only "an indirect economic effect on choices made by insurance buyers, including ERISA plans"); see also *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 810-816 (1997) (state tax imposed on all hospitals, including those operated by ERISA plan); *Dillingham*, 519 U.S. at 330 (state law that required all contractors on state construction projects to pay the prevailing wage, with an exception for state-approved apprenticeship programs, whether or not operated as an ERISA plan); *Mackey* v. *Lanier Collection Agency & Serv.*, 486 U.S. 825, 831-836 (1988) (state garnishment law of general applicability).

the beneficiaries of plan benefits by reference to those documents.

Congress's declared objectives in ERISA include "to protect * * * the interest of participants in employee benefit plans and their beneficiaries" by, *inter alia*, "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." 29 U.S.C. 1001(b); see *Boggs*, 520 U.S. at 845 (observing that the "principal object of [ERISA] is to protect plan participants and beneficiaries"). To that end, Congress made clear that a fiduciary of an employee benefit plan covered by ERISA "shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries" and "for the exclusive purpose of * * * providing benefits to participants and their beneficiaries" and defraying reasonable administrative expenses. 29 U.S.C. 1104(a)(1)(A); see *Boggs*, 520 U.S. at 846-847 (discussing those provisions).

Congress further delineated the responsibilities of the ERISA plan fiduciary in Section 404(a)(1) of the Act, 29 U.S.C. 1104(a)(1), by specifying the source of the governing rules, in addition to those in ERISA itself, for the fiduciary to apply in administering the plan. Section 404(a)(1) provides that the fiduciary "shall discharge his duties with respect to a plan * * * in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]." Congress thus contemplated that a fiduciary, in deciding the myriad questions that arise in the administration of an ERISA plan (including questions as to the proper beneficiary of proceeds payable under the plan), would be governed by ERISA itself and by the "documents and instruments governing the plan." Congress did not also provide that fiduciaries were to look generally to state law in resolving questions of plan administration. To do so would have been contrary to the central goal of fostering "uniform-

ity of decision" in the administration of ERISA plans, so that "administrators, fiduciaries and participants [may] predict the legality of proposed actions without the necessity of reference to varying state laws." H.R. Rep. No. 533, 93d Cong., 1st Sess. 12 (1973) (discussing fiduciary duty provisions).

Congress's understanding that ERISA plan fiduciaries would resolve questions of plan administration, specifically including questions concerning the proper recipient of benefits under a plan, solely by reference to ERISA and the plan documents is further reflected in the statutory definitions of "participant" and "beneficiary." The statute defines a "participant" as "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit." 29 U.S.C. 1002(7). The statute then defines a "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8). Congress thus contemplated that the fiduciary, in determining whether a person was entitled to receive benefits as a beneficiary under the plan, would look no further than the participant's beneficiary designation and the documents setting forth the "terms of [the] employee benefit plan."

Moreover, where Congress intended that plan fiduciaries would look beyond the participant's beneficiary designation to determine the proper recipient of benefits under the plan, Congress expressly so provided in ERISA itself. For example, ERISA requires that pension plans pay a participant's benefits to an alternate payee in accordance with a state "domestic relations order," if that order is submitted to

the plan and found to meet the detailed requirements that ERISA prescribes for a "qualified domestic relations order" (QDRO). 29 U.S.C. 1056(d)(3).[5] If a valid domestic relations order meeting all of the requirements of Section 1056(d)(3) is determined by the plan fiduciary to be "qualified," then the payee under the QDRO becomes a beneficiary of the plan as well, whether or not otherwise designated as a beneficiary by the participant. 29 U.S.C. 1056(d)(3)(J) and (K). Similarly, ERISA requires that group health plans provide benefits to the child of a participant in accordance with a "qualified medical child support order" that meets detailed statutory requirements. 29 U.S.C. 1169(a) (1994 & Supp. IV 1998). As with a QDRO, a child subject to such an order is considered a beneficiary of the group medical plan. 29 U.S.C. 1169(a)(7). Significantly, although ERISA thus accommodates state domestic relations orders and medical child support orders, such orders are not self-executing in their effect on ERISA plans. The determination whether a state domestic relations order meets the requirements of a QDRO or qualified medical child support order rests with the plan administrator, and benefits are not provided to the alternate payee (of pension plan benefits) or alternate recipient (of medical plan benefits) until the order is found to be qualified. 29 U.S.C. 1056(d)(3)(G) and (H); 29 U.S.C.

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[5] ERISA defines a "domestic relations order" as a judgment, decree, or order that "relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant" and is "made pursuant to a State domestic relations law." 29 U.S.C. 1056(d)(3)(B)(ii). A "qualified domestic relations order" is defined as a domestic relations order that "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan," 29 U.S.C. 1056(d)(3)(B)(i)(I), and that meets certain substantive requirements spelled out in 29 U.S.C. 1056(d)(3)(C) and (D). See also 29 U.S.C. 1056(d)(3)(B)(i)(II).

1169(a)(5). See generally *Boggs*, 520 U.S. at 846-847 (discussing provisions authorizing payment of benefits pursuant to QDROs and qualified medical child support orders).[6]

The provisions of Section 1056(d)(3) (with respect to QDROs) and Section 1169(a) (with respect to qualified medical child support orders) confirm that the distribution of plan benefits is a central federal concern under ERISA. They also reflect Congress's understanding that the application of ERISA's general rules—*i.e.*, that ERISA plans are to be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D), and that beneficiaries are to be determined by reference to the participant's designation or the terms of the plan, 29 U.S.C. 1002(8)—in the particular context of marital dissolution is a matter to be addressed in ERISA itself. And Congress has expressly provided that state court orders that come within Section 1056(d)(3) and Section 1169(a) are exempted from preemption under Section 514(a). See 29 U.S.C. 1144(b)(7) (1994 & Supp. IV 1998). The clear implications of those provisions are that state domestic relations laws and orders that purport to direct the payment of benefits by an ERISA plan in other circumstances are preempted, and, more generally, that Congress did not intend to leave to the States the creation of exceptions to, or special applications of, the general rule that the determination of beneficiaries is governed by the participant's designation and the plan documents. See generally *Boggs*, 520 U.S. at 854 ("The axis around which ERISA's pro-

[6] Another provision of ERISA, 29 U.S.C. 1055(c)(2), also looks beyond participants' beneficiary designations in order to provide protection to surviving spouses. That provision requires that a spouse consent in writing to certain choices by the participant that would deprive the spouse of the survivor's annuity that is otherwise mandated by 29 U.S.C. 1055(a). See *Boggs*, 520 U.S. at 842 (discussing that provision).

tections revolve is the concepts of participant and beneficiary. When Congress has chosen to depart from this framework, it has done so in a careful and limited manner."); see also *Metropolitan Life Ins. Co.* v. *Pettit*, 164 F.3d 857, 862 (4th Cir. 1998) (reasoning that the QDRO provision constitutes a "clear signal from Congress about what it considers to relate to an ERISA plan" and thus to be exempt from state regulation under Section 514(a)).

2. The state law at issue here, Section 11.07.010 of the Washington Revised Code, cannot be reconciled with ERISA's central purpose of providing for the uniform administration of employee benefit plans. Section 11.07.010 directly, indeed expressly, regulates the payment of benefits under "[a] payable-on-death provision of a[n] * * * employee benefit plan." Wash. Rev. Code Ann. § 11.07.010(5)(a) (West 1998).[7] It "revoke[s]" a participant's designation of his or her spouse as a beneficiary under the plan if the

[7] Arguably, the state statute's express reference to "employee benefit plan[s]" is sufficient, in itself, to warrant preemption as a statute that "refers to," and thus necessarily "relates to," such plans. See *Mackey*, 486 U.S. at 830 (holding that a "state statute's express reference to ERISA plans suffices to bring it within the federal law's preemptive reach"). The Court has observed, however, that a state law that refers to ERISA plans is preempted on that ground if it "acts immediately and exclusively upon ERISA plans" or "the existence of ERISA plans is essential to the law's operation." *Dillingham*, 519 U.S. at 325. Section 11.07.010 does not apply exclusively to employee benefit plans, and the existence of an ERISA plan is not in all instances essential to its operation. The state statute also applies, for example, to the "payable-on-death provision" of a life insurance policy, an annuity or similar contract, and an individual retirement account. Wash. Rev. Code Ann. § 11.07.010(5)(a) (West 1998). But whether or not the express reference to "employee benefit plan[s]" in the state statute is sufficient in itself to require preemption under Section 514(a), that reference makes clear that the state statute's effect on ERISA plans is not merely incidental, as was true of the laws of general applicability that this Court has found not to be preempted. See pp. 11-12 & n.4, *supra*.

participant and the spouse divorce after the designation is made. *Id.* § 11.07.010(2). It purports to control the designation of beneficiaries and the payment of benefits under employee benefit plans, and thus, as explained above, is at the core of Congress's concerns in enacting ERISA and its express preemption provision.

Accordingly, this case does not involve a state law, such as those described in *Travelers*, 514 U.S. at 661, that has "only a tenuous, remote, or peripheral connection with covered plans." Section 11.07.010 does not merely have some "indirect economic effect on choices made by * * * ERISA plans." *Travelers*, 514 U.S. at 659; accord *Dillingham*, 519 U.S. at 334. Nor is Section 11.07.010 a statute of general application, such as a tax statute, that merely "impose[s] some burdens on the administration of ERISA plans." *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814-816 (1997). To the contrary, Section 11.07.010 has the purpose and effect of "dictat[ing] the choices * * * facing ERISA plans," *Dillingham*, 519 U.S. at 334, on the fundamental question of who is, and who is not, the proper recipient of benefits under the plan.[8]

Section 11.07.010 is thus analogous to one of the state statutes found to be preempted in *Shaw*, 463 U.S. at 97, which "require[d] employers to pay employees specific benefits." It is also analogous to the state statutes found to be preempted in *FMC Corp.* and *Alessi*, which, in effect, directed how the net amount of an employee's benefit was to be calculated. See *FMC Corp.*, 498 U.S. at 58-60 (state anti-

[8] Section 11.07.010 is likewise unlike the general garnishment statute upheld against a preemption challenge in *Mackey*. See 486 U.S. at 831-840. That statute did not purport to dictate the choices made by ERISA plan administrators. It merely provided a mechanism for the collection of money judgments that had been obtained, in proceedings unrelated to employee benefits, against persons who concededly were participants under the terms of an ERISA welfare benefit plan.

subrogation statute); *Alessi*, 451 U.S. at 521-526 (state statute prohibiting offset of workers' compensation benefits against pension benefits); *Travelers*, 514 U.S. at 657-658 (discussing *Shaw*, *FMC Corp.*, and *Alessi*); see also *UNUM Life Ins. Co. of Am.* v. *Ward*, 526 U.S. 358, 366-367 (1999) (noting parties' agreement that state laws concerning payment of benefits under an ERISA plan "relates to" the plan within the meaning of Section 514(a)). State laws directing *who* is to receive benefits under an employee benefit plan "relate to" ERISA plans, within the meaning of Section 514(a), to the same extent as state laws directing *which* benefits are to be provided under such plans or *how* benefits are to be calculated. Section 11.07.010, like the laws in those earlier cases, is therefore expressly preempted under Section 514(a) of ERISA.

II. The Washington Statute Is Also Preempted Because It Conflicts With Provisions Of ERISA And Operates To Frustrate The Objects Of ERISA

Section 11.07.010, in its application to the two ERISA plans in this case, "conflicts with the provisions of ERISA" and "operates to frustrate its objects." *Boggs*, 520 U.S. at 841. Accordingly, aside from whether the state statute "relates to" employee benefit plans within the meaning of Section 514(a), application of the state statute to ERISA plans is preempted under ordinary principles of conflict preemption.

1. Section 11.07.010 conflicts with those provisions of ERISA that, when read in conjunction with the governing plan documents in this case, require that plan benefits be paid to the person designated in writing by the plan

participant. Such a conflict exists with respect to both the pension plan and the life insurance plan.[9]

As discussed above (see pp. 13-14, *supra*), Section 404(a)(1)(D) of ERISA commands the fiduciary of an ERISA plan to "discharge his duties with respect to a plan * * * in accordance with the documents and instruments governing the plan." 29 U.S.C. 1104(a)(1)(D). Section 404(a)(1)(D) necessarily encompasses a fiduciary's determination of the proper beneficiary under an ERISA plan. See *Varity Corp.* v. *Howe*, 516 U.S. 489, 511 (1996) ("[A] plan administrator engages in a fiduciary act when making a discretionary determination about whether a claimant is entitled to benefits under the terms of the plan documents."); *Central States, S.E. & S.W. Areas Pension Fund* v. *Central Transp., Inc.*, 472 U.S. 559, 571-572 (1985) ("ERISA clearly assumes * * * that trustees will take steps to identify all participants and beneficiaries."). That conclusion is confirmed by ERISA's definition of a "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8).

The documents governing the two ERISA plans in this case—like the documents governing many such ERISA plans—provide that benefits are to be paid in accordance with the participant's written beneficiary designation. The summary plan description for the pension plan specifically

[9] In its brief amicus curiae in the Washington Supreme Court, the government argued that Section 11.07.010 is expressly preempted by Section 514(a) of ERISA in its application to both pension plans and welfare benefit plans. Pet. App. 56a-60a. That brief also argued that Section 11.07.010 conflicts with ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1), with respect to pension plans but not to welfare benefit plans, such as the life insurance plan here. See Pet. App. 52a. On further reflection, we have concluded that Section 11.07.010 also conflicts with additional provisions of ERISA that are applicable to both plans.

states that the administrator will recognize only those beneficiaries designated by the participant on a properly filed form; the summary plan description further states that a participant "may not designate or change a beneficiary by using other documents such as divorce decrees, prenuptial agreements, wills or trusts." J.A. 39-40. Similarly, the summary plan description for the life insurance plan provides that the participant will be asked upon enrollment "to designate the person or persons you would like to receive benefits under the [plan] in the event you die while covered," and it specifically directs participants that "you may change your beneficiary designation at any time by contacting the Boeing Group Insurance Office and completing the appropriate form." R. 102; see also J.A. 35.[10] Those written designation provisions are of the precise variety contemplated by ERISA's definition of beneficiary as "a person designated by a participant, or by the terms of an employee benefit plan." 29 U.S.C. 1002(8). There is no dispute that David Egelhoff properly designated petitioner as his beneficiary in accordance with the documents governing both plans. See Pet. App. 3a.

Thus, "[a]lthough ERISA does not say 'pay only the person whose name is on file', it does say that every plan must act 'in accordance with the documents and instruments governing' it, 29 U.S.C. § 1104(a)(1)(D), and th[ese] plan[s] ha[ve] a written-designation rule." *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F.2d 275, 283 (7th Cir.) (en banc) (Easterbrook, J., dissenting), cert. denied, 498 U.S. 820 (1990). Section 11.07.010 effectively

[10] The "documents * * * governing the plan," within the meaning of Section 404(a)(1)(D), include summary plan descriptions. See *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83-84 (1995); see also 29 U.S.C. 1024(b); 29 C.F.R. Pt. 2520, Subpart B (regulations governing summary plan descriptions).

commands that the benefits under an ERISA plan be paid to somebody other than the person whose name is on file and who thus is the proper beneficiary under the terms of the plan. Section 11.07.010 thereby directs an outcome that is contrary to the outcome required by the plan and ERISA. It therefore is preempted.[11]

The federal statutory rule of distributing ERISA benefits in accordance with the plan documents—and thus ordinarily, under an ERISA pension or life-insurance plan, in accordance with a written beneficiary designation—"fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application." *McMillan* v. *Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). Such rules enable plan participants, beneficiaries, and administrators to identify their rights and responsibilities with certainty. See *Varity Corp.*, 516 U.S. at 502-503; *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83-84 (1995). They thereby "yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Fox Valley*, 897 F.2d at 283 (Easterbrook, J., dissenting) (quoted in *McMillan*, 913 F.2d at 312); see also *Pettit*, 164 F.3d at 864 (invocation of state law to countermand written beneficiary designations "reduce[s] the certainty of plan administration and increase[s] litigation," thereby "allow[ing] state law to escalate the administrative costs that Congress sought to decrease").[12]

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[11] Cf. *Arkansas La. Gas Co.* v. *Hall*, 453 U.S. 571 (1981) (regulated utility may charge only its filed rate, and state law departing from that filed rate is preempted).

[12] The prospect that ERISA plans could incur double liability under state laws such as Section 11.07.010 is a real one. As the court of appeals noted, for example, if respondents had made a proper demand on the administrator of the life insurance plan, respondents could sue to recover the life insurance proceeds from the insurer, even though the insurer had already paid the proceeds to petitioner in accordance with the terms of the plan. Pet. App. 42a-44a & nn.16,18; see Wash. Rev. Code Ann. § 11.07.010(3)(a) (West 1998). Thus, an administrator may potentially be subject to conflicting obligations to pay each of the competing claimants—a situation in which "compliance with both federal and state regulations is a physical impossibility." *Boggs*, 520 U.S. at 844. If the administrator paid the proceeds to petitioner, the administrator could be subject to suit by respondents under state law; and if the administrator paid the proceeds to respondents, the administrator could be subject to suit by petitioner under ERISA. See 29 U.S.C. 1132(a)(1)-(3) (authorizing ERISA plan participants and beneficiaries to sue to "recover benefits due * * * under the terms of the plan," to obtain damages for breaches of fiduciary duty, and to obtain equitable relief to redress statutory violations or "to enforce * * * the terms of the plan").

A federal rule that requires adherence to written beneficiary designations might be regarded by some as too rigid in instances, such as those in this case, where a participant who had an incentive to change his designation died before he actually did so. Even in that situation, though, it cannot be assumed that a plan participant would necessarily have chosen to revoke the designation of the former spouse as beneficiary immediately upon divorce. A participant might, out of feelings of obligation, remorse, or continuing affection, intend that the former spouse remain as beneficiary, at least for the time being. In any event, "whether to have rules (flaws and all) or more flexible standards (with high costs of administration and erratic application) is a decision already made" by Congress and the ERISA plans. *Fox Valley*, 897 F.2d at 284 (Easterbrook, J., dissenting). Section 11.07.010 stands as an obstacle to the effectuation of that decision.[13]

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[13] We do not, however, read Section 404(a)(1) to "enable employers to avoid *any* state law simply be referring to that law in [their] ERISA plan." *Hook* v. *Morrison Milling Co.*, 38 F.3d 776, 785 (5th Cir. 1994) (refusing to give preemptive effect to provision in ERISA welfare plan purporting to waive employee's rights to bring negligence suit).

2. Section 11.07.010, in its application to ERISA pension plans, also conflicts with Section 206(d)(1) of ERISA, 29 U.S.C. 1056(d)(1), which states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Section 206(d)(1) was designed "to safeguard a stream of income for pensioners * * * and their dependents" by ensuring that pension funds are not diverted to other persons. *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990). Section 206(d)(1) "is mandatory and contains only two explicit exceptions * * *, which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Neither exception is applicable here.[14]

Section 11.07.010 effects an "alienation" and "assignment," by operation of law, of a spouse's pension plan benefits upon divorce from a plan participant. See *Boggs*, 520 U.S. at 851 (noting the regulatory definition of an "assignment or alienation" as "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary'") (quoting 26 C.F.R. 1.401(a)-13(c)(1)(ii)). The statute "revoke[s]" the former spouse's right to the benefits, Wash. Rev. Code Ann. § 11.07.010(2)(a) (West 1998), thereby alienating the benefits from the recipient designated under the plan. The statute simultaneously assigns the benefits to another person, *i.e.*, the party to whom the benefits would have passed "if the former

[14] The first exception, embodied in 29 U.S.C. 1056(d)(2), allows "any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment," or other assignments executed before the effective date of ERISA, and allows the use of benefits to secure a loan to a participant or a beneficiary. The second exception, embodied in 29 U.S.C. 1056(d)(3)(A), applies to payments of benefits pursuant to a QDRO. See pp. 14-17, *supra* (discussing QDRO provision).

spouse failed to survive the decedent, having died at the time of entry" of the divorce decree. *Ibid.* The statute gives that other person certain rights enforceable against the pension plan. *Id.* § 11.07.010(3)(a) (providing that "[a] payor," *e.g.*, a pension plan, "is liable for a payment or transfer made" to the former spouse after the payor "has actual knowledge of a revocation under this section," although not otherwise).

It is irrelevant for purposes of preemption analysis that the plan participant, David Egelhoff, could have accomplished a similar result, after his divorce from petitioner, by filing an amended beneficiary designation form pursuant to the terms of the pension plan.[15] He did not do so. And state law cannot, consistent with ERISA, act in his stead. Cf. *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 580-581 (1981).

3. The conflict in this case between ERISA and state law is similar to the conflict in *Boggs*. There, the Court, applying conflict preemption principles, held that ERISA preempted state law that would have allowed the wife of a pension plan participant to transfer by will her community-property interest in undistributed plan benefits. The wife had died before her husband retired, and thus before the various pension benefits were distributed, leaving her interest in those benefits to her husband and sons. The husband remarried, retired, and ultimately died, at which time the sons sought to enforce their asserted state-law interest in the benefits against the second wife. See *Boggs*, 520 U.S. at 836-837.

[15] Section 11.07.010, by its terms, does not apply where a divorce decree "requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage." Wash. Rev. Code Ann. § 11.07.010(2)(b)(ii) (West 1998). It thus would appear not to apply in the circumstances covered by the QDRO provision of ERISA.

The Court initially held that the sons' claim to a portion of the second wife's survivor annuity was preempted, relying principally on 29 U.S.C. 1055, which provides that the spouse of a participant is entitled to a survivor's annuity and that the spouse can waive that entitlement only in a notarized written instrument. *Boggs*, 520 U.S. at 844. The Court then turned to the sons' claim to other pension plan benefits distributed to their father during his retirement. The Court noted that the sons had no right to the plan benefits under ERISA itself because the sons were "neither participants nor beneficiaries" under the plan as those terms are defined in the Act. *Id.* at 848. The Court explicitly declined the sons' invitation to "ignore" ERISA's definition of beneficiary and to permit the use of state law to "create a new class of persons for whom plan assets are to be held and administered." *Id.* at 850. The Court added that its "conclusion that Congress intended to pre-empt [the sons'] nonbeneficiary, nonparticipant interests in the retirement plans is given specific and powerful reinforcement by the pension plan anti-alienation provision"; the Court explained that the first wife's testamentary transfer was "a prohibited 'assignment or alienation'" because, as of the time that the transfer occurred, the sons "would have acquired * * * an interest in [the father's] pension plan at the expense of plan participants and beneficiaries." *Id.* at 851-852.[16]

Similarly, here, Section 11.07.010 "create[s] a new class of persons for whom plan assets are to be held and administered," 520 U.S. at 850—*i.e.*, persons who are neither "participants" in nor "beneficiaries" of the employee benefit plans,

[16] The Court's central rationale in *Boggs*, *i.e.*, that state law cannot create a class of persons for whom ERISA plan benefits are held and administered, 520 U.S. at 850, is equally applicable to all ERISA plans, both pension plans (the only sort of plan at issue in that case) and welfare benefit plans, although that rationale was "reinforce[d]" in *Boggs*, *id.* at 851, by the anti-alienation provision applicable only to the former.

as those terms are defined in ERISA, but who nonetheless are given an enforceable interest under state law in the proceeds of those plans. Moreover, as in *Boggs*, the fact that such persons have asserted that interest against the recipient of the benefits at issue, rather than against the plan itself, does not eliminate the conflict with ERISA. As the Court explained, "[r]eading ERISA to permit nonbeneficiary interests, even if not enforced against the plan, would result in troubling anomalies." *Id.* at 850. For example, the Court observed, "[e]ither pension plans would be run for the benefit of only a subset of those who have a stake in the plan," because fiduciaries' obligations under ERISA run only to participants and beneficiaries, 29 U.S.C. 1104(a)(1), or "state law would have to move in to fill the apparent gaps between plan administration responsibilities and ownership rights, resulting in a complex set of requirements varying from State to State." 520 U.S. at 850-851. Here, as in *Boggs*, "[n]either result accords with the [ERISA] statutory scheme." *Id.* at 851.

4. A number of courts have recognized that ERISA preempts state statutes and court decrees that, like Section 11.07.010, would require, as a consequence of divorce, that plan benefits be paid to someone other than the beneficiary who has been properly designated under the plan. See, *e.g.*, *Pettit*, 164 F.3d at 862-863; *Metropolitan Life Ins. Co.* v. *Pressley*, 82 F.3d 126, 130 (6th Cir. 1996), cert. denied, 520 U.S. 1263 (1997); *MacAnally* v. *Levin*, No. 99CA0120, 2000 WL 328723 (Colo. Ct. App. Mar. 30, 2000). Some of those courts have, however, created federal common law rules, often with reference to the rejected state law, under which benefits are payable to other persons in accordance with perceived public policy or equitable considerations. See, *e.g.*, *Equitable Life Assurance Soc'y of the United States* v. *Crysler*, 66 F.3d 944, 948-950 (8th Cir. 1995); *Brandon* v. *Travelers Ins. Co.*, 18 F.3d 1321, 1325-1326 (5th Cir. 1994),

cert. denied, 513 U.S. 1081 (1995); *Fox Valley*, 897 F.2d at 281.

Those courts' resort to federal common law is misguided. As explained above, ERISA itself supplies the applicable rules of law in this area. Congress has articulated the general rules that all ERISA plans be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D); that the beneficiary of an ERISA plan is the "person designated by a participant, or by the terms of an employee benefit plan," 29 U.S.C. 1002(8); and that benefits under ERISA pension plans are not to be "assigned or alienated" away from participants and their beneficiaries, 29 U.S.C. 1056(d)(1). Congress has also established special applications of those general rules, such as in the provisions for QDROs and qualified medical child support orders, that take account of state laws and orders to the extent, and in the manner, that Congress deemed appropriate. See 29 U.S.C. 1056(d); 29 U.S.C. 1169(a) (1994 & Supp. IV 1998).

Resort to federal common law to create other special applications of, or exceptions to, those statutory rules requiring the payment of ERISA benefits to participants and their designated beneficiaries would be in derogation of ERISA. See *Pressley*, 82 F.3d at 130; *Krishna* v. *Colgate Palmolive Co.*, 7 F.3d 11, 15-16 (2d Cir. 1993) (declining to create a federal common law rule to resolve competing claims for benefits under an ERISA plan); see generally *Guidry*, 493 U.S. at 376 ("[C]ourts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text.").[17]

[17] The same problems pertain with respect to the use of a constructive trust theory to obtain the benefits. See *Pettit*, 164 F.3d at 864. The assumption underlying such a trust is that the alternate claimant, not the designated beneficiary, was always entitled to the benefits, and thus could have made a direct claim against the plan. Cf. *Harris Trust & Sav. Bank* v. *Salomon Smith Barney Inc.*, 120 S. Ct. 2180, 2189-2190 (2000).

Moreover, in cases involving claims by non-beneficiary former spouses or dependent children, who could have obtained a QDRO to protect their rights to benefits under an ERISA plan, a federal common law right to benefits would "reduce the QDRO provisions to a meaningless footnote." *Pettit*, 164 F.3d at 864. Accordingly, while we do not rule out resort to background legal principles to resolve claims for ERISA benefits that arise in truly unusual circumstances unlikely to have been contemplated by Congress or the drafters of ERISA plans,[18] this case presents no such circumstances.

[18] For instance, it might well be appropriate to consider the well-established legal principle that "[n]o person should be permitted to profit from his own wrong" if a murderer asserted a claim to benefits as the named beneficiary under the victim's ERISA plan. See *Prudential Life Ins. Co.* v. *Tull*, 690 F.2d 848, 849 (4th Cir. 1982) (applying that principle to an insurance policy issued under Servicemen's Group Life Insurance Act); see also Priv. Ltr. Rul. 89-08-063 (Feb. 24, 1989) (applying the principle that a murderer cannot profit from his victim's death in the ERISA context). It might reasonably be argued that an exception for that situation, reflecting a recognized background principle of the law, is implicit in ERISA and the plans governed by it. However, in general, ERISA would operate to preempt application of the specific state law in this area, although such a law might in some circumstances be saved from preemption as an insurance regulation. See *New Orleans Elec. Pension Fund* v. *DeRocha*, 779 F. Supp. 845, 849-850 (E.D. La. 1991) (state slayer statute saved as insurance regulation; alternatively applying federal common law to reach same result). In any event, the Court "need not presently address the legal aspects of extreme fact situations or of instances where the beneficiary has obtained the proceeds through fraudulent or illegal means as, for example, where the named beneficiary murders the insured." *Ridgway* v. *Ridgway*, 454 U.S. 46, 60 n.9 (1981).

CONCLUSION

The judgment of the Supreme Court of Washington should be reversed.

Respectfully submitted.

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